

## Office of the Secretary of Labor

## § 18.70

recording of a deposition taken by another method. When paid reasonable charges, the officer must furnish a copy of the transcript or recording to any party or the deponent.

(4) *Notice of filing.* A party who files the deposition must promptly notify all other parties of the filing.

(g) *Failure to attend a deposition or serve a subpoena.* A judge may order sanctions, in accordance with § 18.57, if a party who, expecting a deposition to be taken, attends in person or by an attorney, and the noticing party failed to:

(1) Attend and proceed with the deposition; or

(2) Serve a subpoena on a nonparty deponent, who consequently did not attend.

### § 18.65 Depositions by written questions.

(a) *When a deposition may be taken—*

(1) *Without leave.* A party may, by written questions, depose any person, including a party, without leave of the judge except as provided in paragraph (a)(2) of this section. The deponent's attendance may be compelled by subpoena under § 18.56.

(2) *With leave.* A party must obtain leave of the judge, and the judge must grant leave to the extent consistent with § 18.51(b):

(i) If the parties have not stipulated to the deposition and:

(A) The deposition would result in more than 10 depositions being taken under this section or § 18.64 by a party;

(B) The deponent has already been deposed in the case; or

(C) The party seeks to take a deposition before the time specified in § 18.50(a); or

(ii) If the deponent is confined in prison.

(3) *Service; required notice.* A party who wants to depose a person by written questions must serve them on every other party, with a notice stating, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs. The notice must also state the name or descriptive title

and the address of the officer before whom the deposition will be taken.

(4) *Questions directed to an organization.* A public or private corporation, a partnership, an association, or a governmental agency may be deposed by written questions in accordance with § 18.64(b)(6).

(5) *Questions from other parties.* Any questions to the deponent from other parties must be served on all parties as follows: cross-questions, within 14 days after being served with the notice and direct questions; redirect questions, within 7 days after being served with cross-questions; and recross-questions, within 7 days after being served with redirect questions. The judge may, for good cause, extend or shorten these times.

(b) *Delivery to the deposition officer; officer's duties.* Unless a different procedure is ordered by the judge, the party who noticed the deposition must deliver to the officer a copy of all the questions served and of the notice. The officer must promptly proceed in the manner provided in § 18.64(c), (e), and (f) to:

(1) Take the deponent's testimony in response to the questions;

(2) Prepare and certify the deposition; and

(3) Send it to the party, attaching a copy of the questions and of the notice.

(c) *Notice of completion or filing—*(1) *Completion.* The party who noticed the deposition must notify all other parties when it is completed.

(2) *Filing.* A party who files the deposition must promptly notify all other parties of the filing.

### DISPOSITION WITHOUT HEARING

### § 18.70 Motions for dispositive action.

(a) *In general.* When consistent with statute, regulation or executive order, any party may move under § 18.33 for disposition of the pending proceeding. If the judge determines at any time that subject matter jurisdiction is lacking, the judge must dismiss the matter.

(b) *Motion to remand.* A party may move to remand the matter to the referring agency. A remand order must include any terms or conditions and should state the reason for the remand.

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(c) *Motion to dismiss.* A party may move to dismiss part or all of the matter for reasons recognized under controlling law, such as lack of subject matter jurisdiction, failure to state a claim upon which relief can be granted, or untimeliness. If the opposing party fails to respond, the judge may consider the motion unopposed.

(d) *Motion for decision on the record.* When the parties agree that an evidentiary hearing is not needed, they may move for a decision based on stipulations of fact or a stipulated record.

### § 18.71 Approval of settlement or consent findings.

(a) *Motion for approval of settlement agreement.* When the applicable statute or regulation requires it, the parties must submit a settlement agreement for the judge's review and approval.

(b) *Motion for consent findings and order.* Parties may file a motion to accept and adopt consent findings. Any agreement that contains consent findings and an order that disposes of all or part of a matter must include:

(1) A statement that the order has the same effect as one made after a full hearing;

(2) A statement that the order is based on a record that consists of the paper that began the proceeding (such as a complaint, order of reference, or notice of administrative determination), as it may have been amended, and the agreement;

(3) A waiver of any further procedural steps before the judge; and

(4) A waiver of any right to challenge or contest the validity of the order entered into in accordance with the agreement.

### § 18.72 Summary decision.

(a) *Motion for summary decision or partial summary decision.* A party may move for summary decision, identifying each claim or defense—or the part of each claim or defense—on which summary decision is sought. The judge shall grant summary decision if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to decision as a matter of law. The judge should state on the record the reasons for granting or denying the motion.

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(b) *Time to file a motion.* Unless the judge orders otherwise, a party may file a motion for summary decision at any time until 30 days before the date fixed for the formal hearing.

(c) *Procedures—(1) Supporting factual positions.* A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(i) Citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(ii) Showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) *Objection that a fact is not supported by admissible evidence.* A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) *Materials not cited.* The judge need consider only the cited materials, but the judge may consider other materials in the record.

(4) *Affidavits or declarations.* An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(d) *When facts are unavailable to the nonmovant.* If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the judge may:

(1) Defer considering the motion or deny it;

(2) Allow time to obtain affidavits or declarations or to take discovery; or

(3) Issue any other appropriate order.

(e) *Failing to properly support or address a fact.* If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by paragraph (c) of this section, the judge may:

(1) Give an opportunity to properly support or address the fact;